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INTERSTATE ADVISORY COMMITTEE
on the
SUSQUEHANNA RIVER BASIN
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April 4, 1967

MEMORANDUM OF LEGISLATIVE INTENT
Concerning the
Susquehanna River Basin Compact

The management of the water resources of major river basins is one of the most difficult problems of intergovernmental relations, since it involves not only interstate and federal-state questions, but also differences between agencies. Nevertheless, the National Academy of Sciences said in a 1966 report to the President that by and large the river basin provides "a coherent hydrologic unit" that lends itself to coordinated water control, and there is a wide acceptance throughout the nation of the proposition that there must be a comprehensive plan and program for effective water resources development in a river basin. Finally, it is generally agreed that there should be a single agency to assure that the necessary unified water program is carried out in orderly fashion, with proper attention to priorities in development and conservation. Such an agency is needed for effective coordination and leadership in water resource matters in the Susquehanna River Valley, which has been called the largest underdeveloped river basin in eastern America.

Several approaches to coordinated river basin conservation and development have been used in the United States. The oldest is that in the Tennessee Valley, where a single federal agency, the TVA, has taken over all or nearly all activities relating to water. Second is the inter-agency committee device, through which the various federal and state water agencies seek to settle and compromise their divergent interests. Third is the new, so-called Title II planning commission allowed under the federal Water Resources Planning Act of 1965, composed

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of the governors of a basin's states and representatives of the federal water agencies; in these the group of states has one collective vote and the federal chairman has one vote. Finally, there is the multiple purpose interstate-federal compact, such as created initially for the Delaware River Basin, to which Pennsylvania is a party, along with New York, New Jersey, Delaware, and the United States Government.

The TVA type is solely a federal agency, and in its broad field of activity it displaces both state and federal agencies in the basin. It does not have its roots in the region, since the states do not take part in determining policy.

The inter-agency committee does not provide the single-agency approach to a unified program; it is unwieldy, and results achieved seldom satisfy all participants.

The Title II type of planning commission is largely limited by law to planning and, though it may prove useful in many respects, it will not be able to exercise strong leadership in the stimulation of action programs.

When the Pennsylvania General Assembly enacted the Delaware River Basin Compact in 1961, we in the name of the Commonwealth joined in taking a major step forward toward solving the multiple-jurisdictional problems of water resources conservation and development, not only for the Delaware but for other river basins as well. The Delaware River Basin Commission provides the single agency through which both that basin's states and the federal government take part in determining what common water management policies should be. It is widely recognized that the Delaware commission is operating successfully. Certainly the Delaware River Basin Compact was the instrument that made is possible for the states of that basin to meet and cope with the water supply crisis that reached emergency proportions in 1965 and 1966. This was an achievement that was crucial for the cities of Philadelphia and New York. The Delaware compact has not only solved a problem that involved Pennsylvania in interstate disputes for years and took the Commonwealth to the Supreme Court twice, but it has also established a coordinated long term

system of water resources conservation and development for the entire river basin, which is a positive step that judicial action aould not accomplish. It has provided a mechanism through which the State of New Jersey is contributing 22 percent of the water supply storage cost of a large reservoir - Beltzville in the Lehigh River drainage - which lies wholly within Pennsylvania. It is the medium through which the states involved are presenting a unified water quality control program for the entire basin to the federal government. In other words, it already has proved workable and useful.

In 1962 an interstate conference on the Susquehanna River Basin, in which the Joint State Government Commission had a leading part, established the Interstate Advisory Committee on the Susquehanna River Basin, with instructions to prepare an interstate-federal compact for the Susquehanna basin. That committee, consisting of Legislative and Executive Branch members from all three states, has completed the drafting task. As of April 3, 1967, the Susquehanna River Basin Compact has been enacted into law in both New York and Maryland. Introduction of the compact in the Federal Congress is expected soon.

It is obvious from a comparison reading that the characteristics of the Susquehanna compact are similar to those of the successful Delaware compact. The signatory parties are to be the three states and the federal government. As distinguished from a strictly interstate compact where the federal government merely gives consent, the United States would be a full party to the Susquehanna agreement, just as in the case of the Delaware. Accordingly, the compact will be both state law and federal law, the law of New York, of Pennsylvania, of Maryland, and of the United States.

This compact creates a regional administrative agency to act for and to be responsible to the four governments named, in the planning, and in the coordination and leadership of development and control of the water resources of the Susquehanna basin. The Susquehanna River Basin Commission will be an agency not

only of the signatory parties but of each of them, and all the parties will have a voice in determining policies that will be common to all in dealing with interstate-related aspects of water resources management. By providing both a single agency and a single law covering these things, the compact seeks to avoid difficulties inherent in the growing complexities of federal-state relations in water law and water law administration.

Neither the Delaware nor the Susquehanna commission displaces any existing agencies of government within their boundaries. Instead, the present confusion of overlapping or duplicating jurisdictions is eliminated through coordination of the activities of both federal and state agencies. Possibly the greatest difference between the two compacts is the effort made in the Susquehanna to go beyond the Delaware in emphasizing the primary role of the existing and long established agencies of government. Article 1 of the Susquehanna compact states explicitly the intent of the contracting parties that "the commission shall engage in the construction, operation, and maintenance of a (water) project only when the project is necessary to the execution of the comprehensive plan and no other competent agency is in a position to act or such agency fails to act." The language of Section 3.2 is precise in its declaration that it is the policy of the signatory parties to preserve and utilize the functions of existing offices and agencies of government. Section 3.10 goes even further, by specifying in detail the precise types of water projects that are to come before the commission for review and approval, and those types that need not do so.

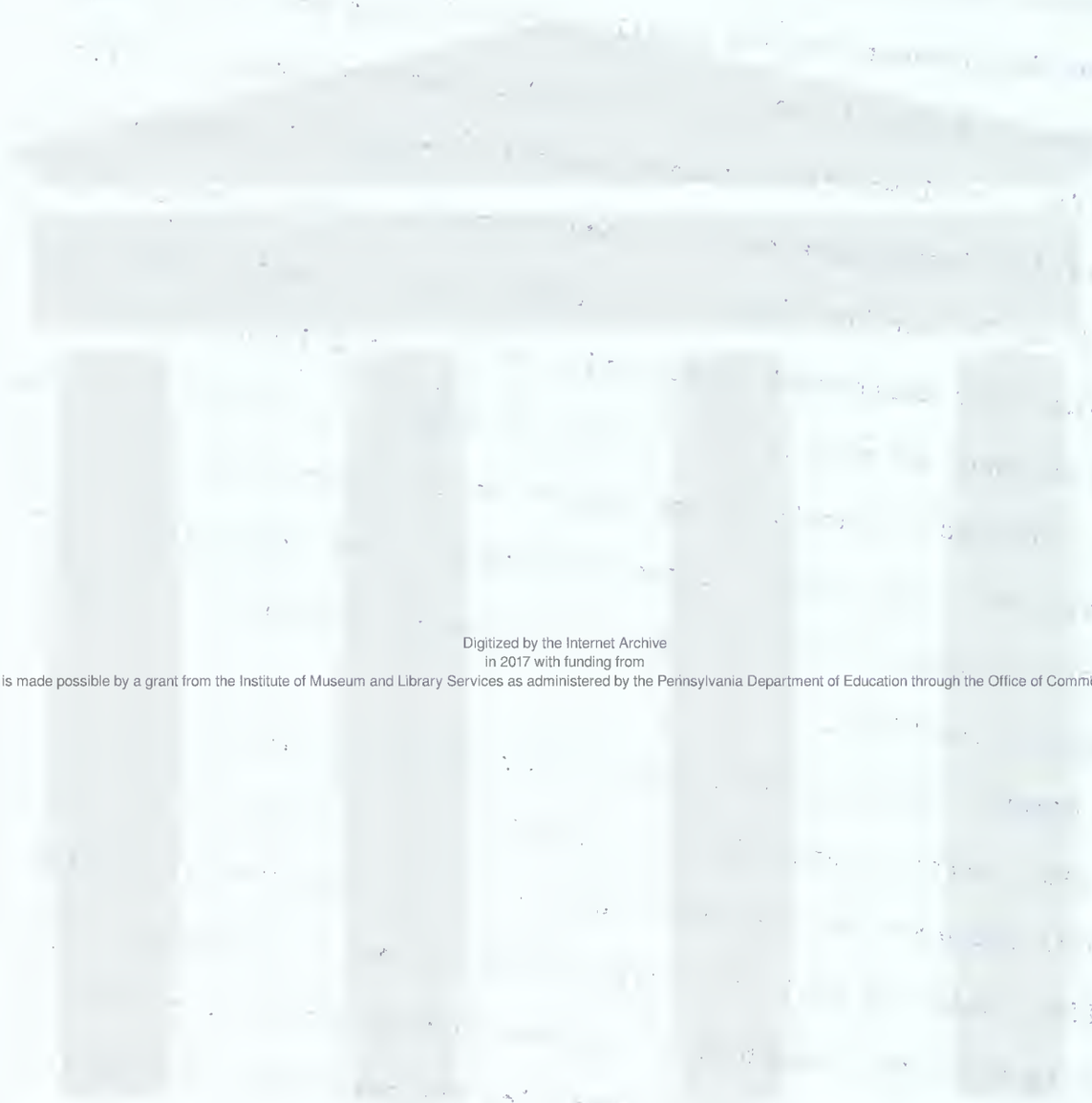
In addition to being the first truly interstate-federal compact, the Delaware agreement also plowed new ground in the manner in which it effectuated political responsibility for such a joint agency. The Delaware commission is composed of the Governors of the four states and a representative of the President, thus achieving direct responsibility both to the people of the four-state region and the nation.

The Susquehanna compact achieves the same responsibility in a slightly different fashion. It recognizes the heavy burdens and difficult schedules of the Governor of a state, and provides that if he wishes the Governor may name a designee to act for him; this allows the Governor relief from some of the burdens, partly those of attendance at meetings, but not of the responsibility.

As written, the Susquehanna compact parallels the Delaware most of the way: in fact, it is largely a duplicate of the successful Delaware agreement. While the drafting task force reviewed the Delaware compact thoroughly in terms of the recognized needs of the Susquehanna basin, it was aware that there should be as little deviation from the earlier compact as possible so as to avoid conflict and confusion regarding water management coordination in the two adjacent basins. Accordingly, the language of much of the Susquehanna compact is identical to that of the Delaware. Changes of substance are limited to instances where there seemed to be substantial reason for change - often based on Delaware experience. Most other differences are modifications of style of language, to conform to modern legislation drafting practices.

Under the compact the Susquehanna River Basin Commission is empowered to formulate and keep current a comprehensive plan for the conservation and development of the water resources of the basin, and to see that all projects having a substantial effect upon the basin's waters are carried out in conformance with the plan. By working with and through existing governmental agencies, or directly when it is proved absolutely necessary, the commission may effectuate the planning, construction, operation, and maintenance of dams, reservoirs, and other needed facilities, and conduct other programs directly related to water resources and having an interstate effect. These include coordination and leadership in interstate pollution matters; and the handling of such rationing as may be necessary in a case of widespread and severe drought emergency.

While the commission is to discharge its responsibilities within the basin,



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it would be permitted to act outside the basin when such action is clearly necessary to the carrying out of its in-basin duties, and it would have the authority to sell waters for public supply that it might itself impound under the limitations previously mentioned. It would be permitted to enter into agreements with other river basin commissions or other states with respect to in-basin or out-of-basin allocations, withdrawals, and diversions. However, no allocation made would "constitute a prior appropriation of the waters of the basin or confer any superiority of right in respect to the use of those waters, nor shall any such action be deemed to constitute an apportionment of the waters of the basin among the parties.' The compact does not change the present laws of any of the parties with respect to riparian rights. The compact was tailored to assure consideration for the water needs of agriculture, industry, municipalities, recreation, and fish and wildlife.

In two areas the Susquehanna compact goes further than the Delaware. It authorizes somewhat wider action with respect to standards of use of flood plains, which is now widely regarded as one of the most effective procedures for stabilizing or reducing flood losses (See House Document 465, 89th Congress, 2nd Session, 1966, "A Report by the Task Force on Federal Flood Control Policy."); however, standards for flood plain use and occupancy could only be applied by the commission with the consent of the affected state.

The other area is found in Article 9, "Other Public Values," which makes it a purpose of the compact in effectuating the conservation and management of water resources "to preserve and promote the economic and other values inherent in the scenic and historic and other natural amenities of the Susquehanna River Basin." However, because of possible constitutional problems in one or more of the signatory parties, the powers of the commission in this regard are recommendatory only, but they do represent an advance over the present situation in that they will bring historic and natural beauty factors before the public from time to time.

The Susquehanna River Basin Compact and the accompanying enabling act constitute a major piece of legislation that should have thoughtful and considerate attention by all members of the General Assembly. It represents an important step toward the solution of interjurisdictional problems of water resources management by instituting in the Susquehanna basin the pattern of coordination and leadership that has been so successful and so widely acclaimed in the Delaware basin.